



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation
on the 16th day of April 1998

Served: April 21, 1998

In the matter of

**Brazil Cargo Charter Authorizations
(1998/1999)**

Docket OST-98-3746

Order to Show Cause

Summary

By this order we have tentatively decided to use the simplified procedures previously established by Order 92-9-22 to distribute the 750 charter flights available for all-cargo services between the United States and Brazil for the 1998/99 charter year, beginning July 1, 1998. Based on these procedures we propose to award 422 of the available charter flights as follows: Florida West - 154; Southern Air Transport - 146; Atlas Air - 44; Arrow Air - 28; Air Transport International - 26; and Tower Air - 24. The remaining 328 charters would be maintained in a charter pool for distribution on a first-come, first-served basis to interested U.S. carriers.

Background

In the 1992/1993 charter year we instituted new simplified procedures for distribution of the U.S.-Brazil all-cargo charters. These simplified procedures replaced our previous year-to-year comparative allocation proceedings, and were implemented because U.S. carrier use of U.S.-Brazil charters did not exceed the number of flights available. Because of increased demand, in the 1995/96, 1996/97, and 1997/98 charter years the Department returned to comprehensive comparative selection proceedings to consider all competing requests and allocated the available flights on an annual basis using show-cause procedures.

In the 1995/96 charter year, U.S. carriers used nearly all of the available charters.¹ However, in the 1996/97 charter year when 750 charters were available, over 100 charters were not used. For the first eight months of the 1997/98 charter year (*i.e.*, through February 28, 1998) U.S. carriers operated only 288 of the 750 available flights. Thus, it appears that over half of the charters could remain unused during this charter year.

Decision

We have tentatively decided to use simplified procedures rather than conducting a competitive allocation proceeding to distribute flights for the upcoming 1998/99 charter year. Based on experience over the past few years, and changes in the Brazil cargo market, including the large number of available charters and reduced use in the past few charter years by U.S. carriers, we believe that more simplified procedures are appropriate and that such procedures will continue to ensure maximum opportunities for all competing interests. Specifically, we propose to reinstitute the simplified procedures previously used to distribute the available flights. Under those procedures, a portion of the 750 available Brazil all-cargo charters would be allocated in advance to incumbent carriers, on a use-or-lose basis based on their most recent two years' experience in the market; the balance would be maintained in a charter pool for distribution on a first-come, first-served basis under procedures similar to those currently in effect for Brazil all-cargo charters. In circumstances comparable to those before us here, such simplified procedures have shown themselves to be a fair, equitable, and efficient means of allocating the available flights and of ensuring that the interests of all parties are met.

Our experience over the past two charter years persuades us that an allocation proceeding is not necessary for the forthcoming charter year. Since 1995, there has been a significant increase in the total number of charter flights available. Prior to 1995, 350 flights could be operated. In 1995, the number increased to 450 annual flights and in the 1996/97 charter year the total number increased to 750 flights. The premise for past comprehensive competitive proceedings was that U.S. carrier demand for Brazil all-cargo charters would exceed the available supply, and, thus, that we should allocate the flights to ensure an equitable distribution of the charters. Charter use during the past two charter years when a total of 750 flights were available each year suggests that such comprehensive procedures may not be necessary. Moreover, within the past few years additional carriers have been authorized to provide scheduled all-cargo services. This could alleviate some of the demand for charter services and help ensure there will be sufficient charter allocations available to accommodate the demand for charters. In these circumstances, consistent with the Department's policy to minimize regulatory burden,

¹ In the 1995/96 charter year a total of 800 charters were available to U.S. carriers. A total of 450 were available under the U.S.-Brazil agreement and an additional 350 were available on an extrabilateral basis by the Brazilian Government.

we see no need to impose on the carriers the process of a comprehensive allocation proceeding. Furthermore, in keeping with this policy, we would expect to continue using simplified procedures in subsequent years until such time as we determine that changed circumstances required us to adopt a different approach.

We believe that the simplified procedures will give carriers with ongoing charter programs the reasonable assurance they need that their programs can continue to the benefit of the shipping public and further will facilitate planning by the carriers most likely to use the flights. New entrants and ad hoc charter operators will continue to have access to flights through a charter pool to meet their needs and the ad hoc needs of the market. Carriers using the charter pool only would automatically qualify for incumbent status and, thus, advance allotments, if they operate a certain number of charters over a two-year base period. Similarly, incumbents that do not maintain a set average level of flights would lose their advance allotments. (They would, of course, be eligible for ad hoc distributions from the pool.)

Simplified Procedures

As previously established in Order 92-9-22, we propose that advance allotments for each carrier be determined by the average number of charters (rounded to the next even number) operated during the past two years. Incumbent carriers (and carriers using the charter pool) would become eligible for advance allotment of charters when they have operated an average of at least 20 charters in two consecutive base years. Because we want to distribute the flights as far in advance of the beginning of the charter year as possible, we have tentatively decided that the two year average will be based on the two most recent calendar years.² This would permit us to distribute the charters well in advance of the beginning of each charter year in July, thereby significantly enhancing the ability of carriers to plan their operations. Based on the calendar year results, in the beginning of each calendar year we would issue a notice announcing the advance allotments and requiring the carriers receiving allotments to notify us within 14 days of the notice as to whether they plan to use the allotments. The advance allotment (or a portion thereof) would be subject to forfeiture if the carriers have no plans to use them, and such forfeited flights would be returned to the charter pool. In addition, each carrier's allotted flights would be subject to forfeiture if less than 40 percent are used or committed for use by contract during the six months ending December 31. As of December 31, flights exceeding the number already operated or committed by contract would be forfeited and returned to the charter pool.

² The Department would use monthly reports filed by the carriers to determine advance allotments for existing incumbents and eligibility for such allotments for other carriers.

We also propose that carriers holding scheduled combination or all-cargo authority in the U.S.-Brazil market not be eligible applicants until the last two months of the charter year when the pool would be available to all carriers with no restrictions. It has been our general policy where charter opportunities are limited to reserve the available flights for carriers that have no other access to the market. We have made exceptions to this policy only where there are special needs for cargo shipments (such as livestock charters) that could not be accommodated by scheduled services.³ We have seen no such history of special-need charters in the Brazil all-cargo market. However, should such special needs arise, we would be prepared to consider them on a case-by-case basis.

The charters not distributed to incumbents in advance would be placed in a charter pool for distribution on a first-come, first-served basis under procedures similar to those currently used in the Brazil all-cargo charter regime.⁴ Carriers without an advance allotment could apply to operate up to ten flights per month from the pool.⁵ To facilitate the operations of smaller carriers and to afford them access to the Brazil cargo market, incumbents (carriers holding advance allotments) would not be permitted to use the charter pool for the first three months of the charter year. When eligible, they would be subject to the same ten-flight limitation as other carriers using the pool.⁶ Any approved flights from the pool that were not operated would be returned immediately to the pool. Since waste becomes a more important concern toward the end of the charter year, in the last two months of the charter year we would lift the limits on the number of flights that could be requested.

Applications for flights from the charter pool could be filed no earlier than 30 days before the flight date and should specify (i) the number of flights requested, (ii) proposed flight dates, including a four-day service window, (iii) the charterer(s), (iv) the city-pair markets involved by direction, (v) the type of aircraft to be used, and (vi) the type of cargo to be transported. Copies of the charter contract or some form of written evidence of the charter commitment is required at the time a charter is requested.

In terms of reporting, each carrier allocated Brazil all-cargo charters, either through advance allotment or the charter pool, would report on its operations for the preceding month by the tenth day of each month.

³ See Order 91-9-11 at 11 and 91-9-60 at 4 regarding allocation of Japan charters.

⁴ We are proposing several limited modifications to the existing charter pool procedures in the interest of facilitating greater usage in light of the large number of unused charters in the 1997/98 charter year. We point these changes out below.

⁵ This would increase the number of charters that carriers without an advance allocation may apply for each month from the charter pool from 8 to 10 charters.

⁶ This would mean that carriers with advance allocations would now be eligible to apply earlier (October 1 rather than January 1) for 10 charters (instead of 4) without first having to use 75 percent of their allocation.

In addition, each carrier granted advance allotments would report no later than January 4 on the number of flights it has operated or has committed by firm contracts for the six months ending December 31. For charters under contract, the carriers would indicate the charterer(s), dates, city-pair markets, and nature of the traffic.

Tentative Allotments for 1998/99 Charter Year

Applying these procedures to the 1998/99 charter year, six carriers--Florida West, Southern Air Transport, Atlas, Arrow Air, Air Transport International, and Tower Air--qualify for advance allotments. Based on data filed by these carriers with respect to their U.S.-Brazil all-cargo charter operations for calendar years 1996 and 1997, we propose to award to Florida West, 154 charters; Southern Air Transport, 146 charters; Atlas Air, 44 charters; Arrow Air, 28 charters; Air Transport International, 26 charters; and Tower Air, 24 charters, for a total of 422 charters. The remaining 328 charters would be available for distribution from the charter pool.

We will afford all interested parties an opportunity to comment on our tentative decision.

ACCORDINGLY,

1. We establish Docket OST-98-3746 for consideration of Brazil all-cargo charter authorizations (1998/1999);
2. We tentatively allocate U.S.-Brazil all-cargo charters to incumbent carriers that have operated an average of at least 20 flights during the past two calendar years as follows: Florida West International Airways, Inc. - 154; Southern Air Transport, Inc. - 146; Atlas Air, Inc. - 44; Arrow Air, Inc. - 28; Air Transport International LLC - 26; and Tower Air, Inc. - 24, and tentatively require that each carrier notify the Department within 14 days of a final order in this proceeding as to whether it plans to use its allocation;
3. We tentatively conclude that the advance allotments in paragraph 1 should be subject to the following condition: Where fewer than 40 percent of a carrier's allocated charters have been used or been committed for use by firm contracts during the six-month period ending December 31, the remaining charter allotments exceeding the number equal to the number of those already operated or committed in the preceding six months would be forfeited and placed in the charter pool;
4. We tentatively reserve 328 charters, not subject to advance allotment, to a charter pool for distribution on a first-come, first-served basis;
5. We tentatively establish a charter pool subject to the following conditions:

(a) For the period July 1 through September 30, only carriers that have no advance allotments would have access to the charter pool; distributions would be made on a first-come, first-served basis and eligible applicants may operate up to ten charters per month;

(b) Carriers receiving advance allocations are not eligible to obtain flights from the charter pool until October 1, after which date they may apply for up to ten charters per month. Carriers holding scheduled combination or all-cargo authority in the U.S.-Brazil market are not eligible applicants until after April 30;

(c) After April 30, no restrictions apply on the number of charters that may be applied for each month;

(d) Applications to operate charters may be filed no earlier than 30 days in advance of the flight date;

(e) Applications must identify (i) the number of flights requested, (ii) proposed flight dates, including a four-day service window, (iii) the charterer(s), (iv) the city-pair markets involved by direction, (v) the type of aircraft to be used, and (vi) the type of cargo to be transported. Copies of the charter contract or some form of written evidence of the charter commitment is required at the time a charter is requested.

6. We propose to require that each carrier granted advance allotment charters in this proceeding inform the U.S. Air Carrier Licensing Division (X-44), Office of International Aviation, by letter, no later than January 4, of the number of charters it has operated or has committed by firm contracts. For charters under contract, carriers shall indicate the charterer(s), dates, city-pair markets, and nature of the traffic;

7. We propose to require each carrier granted either advance allotment or pool charters to notify the U.S. Air Carrier Licensing Division (X-44), Office of International Aviation, no later than the tenth day of each month (or until its charters are exhausted, whichever occurs earlier) of: (a) the number of Brazil all-cargo charters operated during the preceding month; (b) the city-pairs served by direction; (c) the date of each flight; (d) the charterer(s); (e) the type of aircraft used; (f) the type of cargo carried; (g) whether the carrier operated the flight(s) in its own right or with wet-leased equipment, and the number of flights operated by the carrier itself and the number operated by wet lease; and (h) the number of charters for which Brazilian authority was obtained for that month which subsequently were canceled or rescheduled;⁷ Carriers allocated charters shall

⁷ Reports on flights operated from the charter pool under a Notice of Consistency should also identify the date of the Notice granting the flights. A statement should also be included verifying that the Government of Brazil has been notified in writing of any changes and/or cancellations of flights.

notify the Department and the Government of Brazil whether or not any charters have been operated by the carrier during the month.⁸

8. We tentatively delegate to the Director of the Office of International Aviation the authority to administer distribution of flights from the charter pool proposed by this order and, where deemed in the public interest, to waive the restrictions on the charter pool;

9. We direct all interested parties objecting to the tentative decisions described in this order to file their objections with the Department, Dockets, in Docket OST-98-3746, U.S. Department of Transportation, 400 Seventh Street, S.W., Room PL-401, Washington, DC 20590, no later than ten calendar days from the date of service of this order; answers to such objections shall be filed no later than five calendar days thereafter;⁹

10. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action;¹⁰

11. In the event that no objections are filed, we will deem all further procedural steps to be waived and we will enter an order finalizing our tentative allocations and procedures;

12. We will serve a copy of this order on Arrow Air, Inc.; Atlas Air, Inc.; Air Transport International, LLC; Florida West International Airways, Inc.; Southern Air Transport, Inc.; Tower Air, Inc.; all other U.S. certificated air carriers; the Ambassador of Brazil in Washington, DC; and the U.S. Department of State (Office of Aviation Negotiations).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*

⁸ Carriers are advised that they must follow the Brazilian government's procedures for notification of change or cancellation or be subject to forfeiture of those frequencies by the Brazilian government.

⁹ All pleadings should be unbound without tabs on 8 ½"x 11" paper using dark (not green) ink to facilitate use of the Department's docket imaging system.

¹⁰ As we are providing for answers to this tentative decision, we will not entertain petitions for reconsideration of our tentative procedures/allocations in this order.